

1 HONORABLE RONALD B. LEIGHTON
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA
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15 HERMAN BARNES, JR.,
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17 Plaintiff,

v.

SOCIAL SECURITY OFFICE,
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19 Defendant.

Case No. C10-5350RBL

ORDER

20 THIS MATTER comes on before the above-entitled Court upon Plaintiff's Application to Proceed
21 *In Forma Pauperis*. Having considered the entirety of the records and file herein, the Court finds and
22 rules as follows:

23 Plaintiff, an incarcerated federal felon, has filed an Application to Proceed *In Forma Pauperis* and
24 a proposed Complaint. He alleges pursuant to 42 U.S.C. § 1983 that his constitutional rights (presumably
25 due process rights) have been violated by the Commissioner of Social Security. The alleged violation
26 has occurred due to the Commissioner's failure to respond to his February 2, 2010 letter seeking to apply
27 for Social Security Disability benefits. It is unclear from the materials submitted if Plaintiff has actually
28 filed for benefits and been denied thus exhausting his administrative remedies; however, even if Plaintiff
has exhausted his administrative remedies, he is an incarcerated felon and he is statutorily barred from
receiving Social Security benefits while in prison. 42 U.S.C. § 402(x); see generally *Butler v. Apfel*, 144
F.3d 622 (9th Cir. 1998).

1 The Bureau of Prisons website indicates that Plaintiff's release date is May 23, 2013. Once
2 released from prison, he may then apply for Social Security Disability benefits.

3 Accordingly, Plaintiff's Application to Proceed *In Forma Pauperis* is **DENIED** and his proposed
4 Complaint is **DISMISSED**.

5 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party
6 appearing pro se.

7 Dated this 3rd day of June, 2010.

Ronald B. Leighton
RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE